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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,518	01/26/2001	Pierre Messier	CLW 2 0142	5871
24964	7590	04/29/2005		EXAMINER
GOODWIN PROCTER L.L.P				CHORBAJI, MONZER R
103 EISENHOWER PARKWAY				
ROSELAND, NJ 07068			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

V8

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/770,518	MESSIER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MONZER R. CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 March 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 52-93 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 52-93 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 January 2001 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

**This non-final action is in response to the RCE/Amendment received on 03/09/2005**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 52-93 are rejected under 35 U.S.C. 102(b) as being anticipated by Petri (EP 0842 605 A1).

With respect to claims 52, 66 and 80, the Petri reference discloses a method (page 3, numbered lines 20-21) for spraying a disinfectant composition (page 3, lines 22-23) in aerosol form (page 9, numbered lines 53-54) on inanimate surfaces (page 10, numbered lines 2-10) that includes the following: about 11% by volume of hydrogen peroxide (page 3, numbered lines 44-45 and converting 15 % by weight using the density value for hydrogen peroxide at 20 degree Celsius to be 1.45 g/ml), 13% by volume (page 9, numbered lines 26-27 and converting 10 % by weight using the density value for ethanol at 20 degree Celsius to be 0.79 g/ml) of ethanol (equivalent to the flash vaporization component) and a water reminder (page 11, water entry up to 100 %). The Petri reference further teaches that upon spraying the composition onto a hard surface, no residues (page 10, numbered lines 11-13) are left (equivalent to leaving an essentially dry surface having anti-microbial agent deposited upon). The Petri reference further teaches that the compositions are packaged in spray dispensing containers

(page 9, numbered lines 37-54) that inherently include spray nozzles for spraying the composition onto hard surfaces in an aerosol form.

With respect to claims 53, 67 and 81, the Petri reference teaches the remainder includes water (page 11, water entry up to 100 %).

With respect to claims 54-56, 68-70 and 82-84, the Petri reference teaches including ethanol (page 9, numbered lines 26-27) in the disinfectant composition.

With respect to claims 61, 75 and 89, the Petri reference teaches adding about 11% by volume of hydrogen peroxide (page 3, numbered lines 44-45 and converting 15 % by weight using the density value for hydrogen peroxide at 20 degree Celsius to be 1.45 g/ml).

With regard to claims 57, 62, 71, 76, 85 and 90, the Petri reference discloses a method (page 3, numbered lines 20-21) for spraying a disinfectant composition (page 3, lines 22-23) in aerosol form (page 9, numbered lines 53-54) on inanimate surfaces (page 10, numbered lines 2-10) that includes the following: about 11% by volume of hydrogen peroxide (page 3, numbered lines 44-45 and converting 15 % by weight using the density value for hydrogen peroxide at 20 degree Celsius to be 1.45 g/ml), 13% by volume (page 9, numbered lines 26-27 and converting 10 % by weight using the density value for ethanol at 20 degree Celsius to be 0.79 g/ml) of ethanol (equivalent to the flash vaporization component), about 12 % by volume of Geraniol (page 3, numbered lines 47-48 and page 4, numbered line 3 and converting 10 % by weight using the density value of Geraniol to be 0.877 g/ml), about 3% by volume of malonic acid (page 8, numbered lines 52-57 and converting 5 % by weight using the density value for

malonic acid to be 1.619 g/ml) and about 62 % by volume of water (page 11, water entry up to 100 % and converting 60 % by weight using the density value of water at 20 degree Celsius to be 1 g/ml).

With respect to claims 58-60, 63-65, 72-74, 77-79, 86-88 and 91-93, the Petri reference teaches including ethanol (page 9, numbered lines 26-27) in the disinfectant composition.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 52-93 have been considered but are moot in view of the new ground(s) of rejection.

On page 10 of the Remarks section, applicant argues that, "Although the Petri composition is also sprayable, it is for disinfecting animate surfaces, not inanimate surfaces as in the claimed invention." The examiner disagrees. On page 10, numbered lines 2-10, the Petri reference teaches disinfecting inanimate surfaces.

The submitted test results have been considered; however, the Petri reference teaches that the concentration of hydrogen peroxide falls from about 0.1% to 15% by weight. Such a range includes 30% by volume as in the submitted test results, which is inherently capable of providing superior sterilizing effects on inanimate surfaces.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Monticello et al reference (U.S.P.N. 6,106,774) discloses a disinfectant composition for disinfecting inanimate surfaces that includes hydrogen peroxide, alcohol and water.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R. CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN KIM can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji *MRC*  
Patent Examiner  
AU 1744  
04/25/2005

*John Kim*  
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SUPERVISORY PATENT EXAMINER